IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 916 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

JAY YOGESHWARNAGAR CO-OPERATIVHOUSING SOC LTD.

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner

MR DN PATEL, A.G.P. for Respondents No. 1 & 2.

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 13/07/98

ORAL JUDGEMENT

By means of filing this petition under Articles 226 & 227 of the Constitution, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ, order or direction to quash and set aside order dated January 8, 1997 passed by the Urban Land Tribunal, Revenue Department, State of Gujarat, Ahmedabad by which declaration made by the Competent Authority and Additional Collector, Urban Land Ceiling, Vadodara under section 21(2) of the Urban Land (Ceiling and Regulation) Act, 1976 ("the Act" for short) vide order dated August

12, 1996 to the effect that 19398 sq.mts.land of revenue survey nos. 2, 4, 6 & 7 situated at village Sama, Taluka & District : Vadodara is excess land, is upheld.

2. Revenue Survey nos. 2, 4, 6 & 7 situated at village Sama, Taluka & District : Vadodara belonged to (1) Shri Prakashbhai Ranchhodbhai Patel, (2) Shri Arvindbhai Ranchhodbhai Patel, (3) Shri Rajendrakumar Ranchhodbhai Patel, and (4) Shri Mahendrakumar Jashbhai Patel. They were holding vacant land in excess of the ceiling limit prescribed under Section 4(1) of the Act. Within specified time they declared their intention before the Competent Authority to utilize excess land for the construction of dwelling units for the accommodation of weaker sections of the Society, in accordance with the scheme approved by the Competent Authority. After taking into consideration relevant materials, the Competent Authority by an order dated October 30, 1986 declared that land admeasuring 19398 sq.mts. which was excess land held by holders as not excess land for the purpose of Chapter-3 of the Act and permitted them to continue to hold land to enable them to utilise it for construction of dwelling units for the accommodation of the weaker sections of the society. By the said order, the land holders were directed to construct 178 dwelling units of prescribed area and 22 conditions were stipulated therein.

3. Thereafter the land holders constructed certain dwelling units and sold the units to whom which according to them were members of weaker sections of the society. The Surveyor discharging duties in the Office of Competent Authority and Additional Collector, Urban Land Ceiling, Vadodara made spot visit on April 3,1992 as well as on January 20, 1993 and submitted a report to the Competent Authority. The Competent Authority had also received complaint dated August 3, 1993 from the members to whom dwelling units were sold by land holders, indicating breach of conditions on which the land holders were permitted to hold excess land. The Competent Authority noticed that the land holders had not completed construction of dwelling units within five years as stipulated in order dated October 30, 1986, nor had given sufficient publicity to the scheme which was meant for accommodation of weaker section of the society. It was found by the Competent Authority that progress report pertaining to construction was not sent to the specified officer every fortnight as stipulated in order dated October 30, 1986 and the land holders had not obtained completion certificate from the specified officer nor obtained occupancy certificate from the office of Competent Authority and Additional Collector, Urban Land

Ceiling,Vadodara. It was also observed that 16 dwelling units were transferred without providing primary amenities like electricity, water connection, gutter connection, roads etc.and were allotted without production of any record relating to income etc.of the persons to whom they were allotted. The Competent Authority, therefore, issued notice dated June 10, 1996 calling upon the land holders to show cause as to why permission granted under section 21(1) of the Act should not be cancelled and land admeasuring 19398 sq.mts.of revenue survey nos. 2,4,6 & 7 situated at village Sama should not be declared as excess land under section 21(2) of the Act. The show-cause notice given to the land holders is produced by the petitioner at Annexure-C to the petition.

4. The Competent Authority after taking into consideration the relevant materials and hearing the land holders, came to the conclusion that the land holders had committed breach of conditions stipulated in order dated October 30,1996 and, therefore, the land in question was liable to be declared as excess land under section 21(2) of the Act. The Competent Authority, therefore, by an order dated August, 12,1996 declared 19398 sq.mts. of land of revenue survey nos. 2,4,6 & 7 situated at village Sama as excess land under section 21(2) of the Act. The order passed by the Competent Authority is produced by the petitioner at Annexure-D to the petition. Feeling aggrieved by the said order,the petitioner preferred an appeal under section 33 of the Act before the Urban Land Tribunal, Ahmedabad which has dismissed the same by order dated January 8, 1997, giving rise to the present petition. The order passed by the Tribunal is produced by the petitioner at Annexure-F to the petition.

5. Mr. A.J.Patel, learned Counsel for the petitioner submitted that individual members of weaker sections of the society to whom dwelling units were sold by the land holders and who have formed a society which is registered under the provisions of the Gujarat Co.operative Societies Act were not heard by the Competent Authority and Additional Collector before passing order dated August 12,1996 and, therefore, the petition deserves to be accepted. It was pleaded that as the members of the society to whom dwelling units are sold by the land holders are adversely affected by the impugned order, they should have been accorded the opportunity of being heard and as the impugned orders are contrary to the principles of natural justice, the same should be set aside. What was emphasised by the learned

Counsel for the petitioner was that after grant of permission on October 30, 1986, show-cause notice was issued on June 10, 1996 i.e. almost after 10 years and, therefore, the orders passed by the Competent Authority without hearing the members to whom dwelling units were sold should be quashed by the Court. In support of his submission, learned Counsel for the petitioner relied on unreported decision rendered in the case of Manharlal Bhagwandas Patel Vs. State of Gujarat and others, Special Civil Application no. 3463/96 decided on December 19-20, 1996 by Court (Coram: Miss R.M.Doshit, J.).

6. Mr. D.N.Patel,learned Counsel for the respondents no.1 & 2 pleaded that original land holders were permitted to hold vacant land in excess of the ceiling limit for construction of dwelling units to accommodate weaker sections of the society and as they had contravened conditions subject to which permission was granted under section 21(1) of the Act, the Competent Authority was required to afford opportunity of being heard to the land holders and not to those to whom dwelling units were sold by the land holders. It was argued that it is not the case of the respondents no.1 & 2 that those persons to whom the dwelling units were sold by the landholders had contravened any of the conditions subject to which permission was granted to the land holders under section 21(1) of the Act and, therefore, it was not necessary for the Competent Authority to afford any opportunity of hearing those persons to whom dwelling units were sold by the land holders. What was stressed by the learned Counsel for respondents no.1 & 2 was that Court should not enlarge scope of section 21(2) of the Act so as to mean that persons to whom dwelling units are sold by holders of vacant land should also be heard before passing order under section 21(2) of the Act, as the same is likely to result into administrative difficulties and multiplicity of proceedings. Learned Counsel for the State Government asserted that the original land holders were afforded opportunity of being heard as contemplated by section 21(2) of the Act and as the principles of natural justice were not violated by the authorities, the petition should be dismissed.

7. In view of rival submissions advanced at the Bar, question which falls for consideration of the Court is whether the persons to whom dwelling units are sold by the holder of vacant land who is permitted to hold excess land under section 21(1) of the Act, should be heard by the Competent Authority before passing an order under section 21(2) of the Act ?

8. Section 21 provides that where a person holds any vacant land in excess of the ceiling limit and declares before Competent Authority that such land is to be utilised for construction of dwelling units (each such dwelling unit having a plinth area not exceeding eighty square metres) for the accommodation of the weaker sections of the society, the Competent Authority may declare such land not to be excess land and permit such person to continue to hold such land for the aforesaid purpose subject to such terms and conditions as may be prescribed by rules. A provision has been made in sub-section (2) of Section 21 to the effect that when any person contravenes any of the conditions subject to which permission for holding land has been granted, the Competent Authority shall by an order and after giving such person an opportunity of being heard,declare such land to be excess land and thereupon all the provisions of Chapter-3 shall apply accordingly.

9. In exercise of powers conferred by sub-section (1) read with sub-section (2) of Section 46 of the Act, Central Government has made rules known as 'Urban Land (Ceiling and Regulation) Rules, 1976. Rule 11-A makes provision for terms and conditions subject to which a person may be permitted to continue to hold excess vacant land under sub-section (1) of Section 21 of the Act and the Rules read as under:-

"11-A. Terms and conditions subject to which a person may be permitted to continue to hold excess vacant land under sub-section (1) of Sec.21 : The terms and conditions subject to which the competent authority may permit a person to continue to hold vacant land,in excess of the ceiling limit,under sub-section (1) of Sec.21, for the construction of dwelling units for the accommodation of the weaker sections of the society in accordance with any scheme shall be the terms and conditions specified in Sch.1-A."

10. A bare reading of the above quoted Rule makes it evident that terms and conditions subject to which Competent Authority may permit a person to continue to hold vacant land in excess of ceiling under sub-section (1) of Section 21 for construction of dwelling units for the accommodation of weaker sections of the society in accordance with the Scheme are the terms and conditions specified in Schedule I-A. Schedule I-A specifies terms and conditions subject to which a person may be permitted

to continue to hold excess vacant land under sub-section (1) of Section 21. As those terms and conditions are relevant for adjudicating the point involved in the petition,they are reproduced hereinbelow:-

"Terms and conditions subject to which a person may be permitted to continue to hold excess vacant land under sub-section (1) of Sec.21.

1. The construction of dwelling units for the accommodation of the weaker sections of the society in the vacant land, in relation to which the declaration of the competent authority is sought or made under section (1) of Sec.21, shall be consistent with the Master Plan,if any, for the urban agglomeration or that part of the urban agglomeration wherein such land is situated or, if there is no Master Plan for the urban agglomeration or such part thereof, such directions as the State Government may give in relation to land used in the urban agglomeration,or such part having regard to the planned development of the urban agglomeration or any part thereof.

2. No less than fifty per cent of the total number of dwelling units constructed by any person under the scheme shall have plinth area not exceeding forty square metres.

3. The construction of the dwelling units shall be completed within five years from the date on which the declaration is made by the competent authority under sub-section (1) of Sec.21, permitting the person concerned to continue to hold the vacant land for the purpose specified in that sub-section.

4.(1) The dwelling units constructed under the scheme shall be sold by outright sale or on hire purchase or shall be let out on rent to the weaker sections ofthe society.

(2) Where any dwelling unit is sold by outright sale, the sale price which such person shall be entitled to receive shall not exceed a sum consisting of;-

(i) the actual cost of construction of the dwelling-unit.

(ii) either ten times the net average annual income actually derived from the land for

the period of five consecutive years referred to in Cl.(a) of sub-section (1) of Sec.11 or five times the amount he would be entitled to under Cl.(b) of sub-section (1) of that section, whichever is higher, in respect of the land occupied by such dwelling-unit and the land appurtenant thereto,if such land is deemed to have been acquired by the State Government under sub-section (3) of Sec. 10; and

(iii) a sum calculated at the rate of fifteen per cent,on such cost of construction and such cost of land referred to in (ii) above.

Explanation :-Where the dwelling-unit is part of a building, being a group housing, the proportionate share in relation to the dwelling-unit in the amount paid in relation to the land occupied by the building and the land appurtenant thereto, determined on the basis of the ratio of the plinth area of the dwelling-unit to the total plinth area of the building, only shall be taken into account in determining the sale price of the dwelling-unit under this sub-paragraph.

(3) Where any dwelling unit is sold on hire-purchase, such person shall be entitled to get, in addition on the sale price determined in accordance with sub-paragraph (2), interest calculated at the rate of ten per cent per annum on the unpaid portion of the sale price.

(4) Where any dwelling unit is let-out on rent, the rent shall be worked out in such a way that such person would get a return not exceeding ten percent per annum on the sale price of the dwelling-unit determined in accordance with sub-paragraph (2).

Explanation:- For the removal of doubts it is hereby declared that in working out the return on the sale price which such person may get under this sub-paragraph by way of rent the fact that the dwelling-unit has been vacant, or is likely to remain vacant,for any part ofthe year shall not be taken into account.

5. Between the date on which a declaration in relation to the vacant land is made by the competent authority under sub-section (1) of Sec.21 and the date of completion of the construction of the dwelling-units, the person concerned shall not transfer the land by way of sale,gift, lease or otherwise:

Provided that such personmay mortgage it without possession to the State Government or Central Government or a bank as defined in Sec. 19 for getting a loan for the purpose of constructing such dwelling-units."

11. A bare reading of Clause-4 of Schedule I-A makes it abundantly clear that the dwelling units constructed by holder of vacant excess land have to be sold at a price to be determined in accordance with sub-clause(2) of Clause-4 to the members who belong to weaker sections of the society. Further clause-5 of Schedule I-A leaves no manner of doubt that after completion of the construction of dwelling units, the holder of excess vacant land can transfer the land on which dwelling unit is constructed by way of sale, gift, lease or otherwise. The assertion made by the petitioner that each member of the petitioner-Society which is registered under the provisions of the Gujarat Co.operative Societies Act has paid price of the dwelling unit as well as piece of land on which dwelling unit is constructed,to the land holders, is not disputed. On completion of scheme as envisaged by the Act and allotment of dwelling unit to a member belonging to weaker section of the society, the holder of vacant excess land does not continue to have interest in the land for all time to come. When an order is sought to be made under section 21(2) of the Act, it is bound to affect adversely those persons to whom dwelling units with land are sold and who have become owners of the dwelling units as well as lands on which dwelling units are constructed. Section 21(2) of the Act leaves no discretion to the Competent Authority and once it is held by the Competent Authority that conditions subject to which the permission was granted under section 21(1) of the Act are/were contravened, the land has got to be declared as excess land to which provisions of Chapter-3 of the Act would apply. When the land on which dwelling units are constructed is declared to be excess land to which provisions of Chapter-3 apply, there is no manner of doubt that it would adversely affect the purchaser of the dwelling unit because the excess land so declared stands acquired by the Government and is subject to disposal as contemplated by section 23 of the Act. Over and above the land holders, even those to whom dwelling units are sold with land can also amongst other things point out to the Competent Authority that their income is such which would entitle them to be treated as members belonging to weaker sections of the society and that other contravention, if any, on the part of land holders should be condoned.

12. The phrase 'natural justice' is not capable of static and precise definition. However, a duty to act fairly i.e. in consonance with the fundamental principles of substantive justice, is generally implied, irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial. The object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. Natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions of proceedings be given adequate notice of what is proposed so that they may be in a position, (a) to make representation on their own behalf; (b) or to appear at a hearing or inquiry (if one is held); and (c) to prepare their own case effectively and answer the case (if any) they have to meet.All actions against affected parties which involve penal or adverse consequences must be in accordance with the principles of natural justice. The rules of natural justice do not supplant law, but supplement it. If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. As is well settled, rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. It is not permissible to interpret any statutory instrument so as to exclude natural justice,unless the language of the instrument leaves no option tothe Court. Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties. A bare reading of section 21(2) of the Act makes it very clear that there is no statutory provision which specifically excludes application of rules of natural justice so far as those to whom dwelling units are sold are concerned. Having regard to the language and basic scheme of the provisions

conferring powers on Competent Authority under section 21(2) of the Act, the terms and conditions which are to be stipulated under section 21(1) of the Act,the purpose for which holder of an excess vacant land is to be permitted to hold the land as well as consequences which would follow from declaration made under section 21(2) of the Act, I am of the view that application of rules of natural justice is not excluded by implication. When the administrative decision taken by the authority involves civil consequences of a grave nature, Courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features unless viewed pragmatically,it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. Having too far reaching adverse civil consequences which are likely to result from declaration which may be made by the Competent Authority under section 21(2) of the Act, I am of the view that persons to whom dwelling units are sold should be heard before making declaration under section 21(2) of the Act.

13. At this stage it would be instructive to refer to a Division Bench judgment of our Court rendered in the case of H.H.Parmar Vs. Collector,Rajkot & Anr., 1979(2) G.L.R. 97. In the said case the petitioner was appointed as Chief Officer of the Municipality by resolution which was passed by the Municipality. When the fact of appointment came to the notice of Collector,Rajkot,he in exercise of powers conferred on him by section 258 of the Gujarat Municipalities Act,1963 stayed operation of the said resolution and issued a notice to the Municipality to show cause why its resolution should not be permanently stayed. The Municipality filed petition in the High Court in which order of Collector staying implementation of the said resolution was challenged. That petition was summarily dismissed. Letters Patent Appeal filed against that order was also dismissed. The Collector after hearing the Municipality confirmed his interim order and permanently stayed the implementation of the said resolution. Accordingly, the Municipality intimated to the petitioner that Collector had permanently stayed implementation of the resolution by which he was appointed as Chief Officer. It was that order which was challenged by the petitioner before the High Court. One of the arguments which was advanced by the petitioner of the said case was that he was not given an opportunity of

being heard before the Collector and, therefore, the impugned order was liable to be set aside. The Division Bench considered the question whether in the context of sub-section (1) of section 258, the petitioner was entitled to be heard before Collector had made the impugned order. It was argued on behalf of the Collector that 3rd party, who had received some benefits under the resolution, was not entitled to be heard before the benefit which had accrued to him was withdrawn by the Collector by making an order under section 258(1) of the Act. After examining the scheme of section 258(1) of the Act, the Division Bench has held that if an order of appointment has been issued and appointee has taken charge of his office under the resolution, a right accrues to the appointee to hold that office and the question whether that right has lawfully accrued to him or unlawfully accrued to him cannot be decided against him unless he has been heard and, therefore, it was necessary for the Collector before taking an action under section 258 of the Gujarat Municipalities Act to issue notice to the petitioner giving him a reasonable opportunity of being heard before the impugned order was made. In my view, the principle laid down by the Division Bench will apply with all fours to the facts of the present case. The persons to whom the dwelling units are sold with land have derived benefits under the Scheme which was sanctioned under section 21(1) of the Act. The making of declaration under section 21(2) of the Act has effect of withdrawing benefits made available to members of weaker sections of the society. The declaration also would affect their proprietory rights. Under the circumstances,I am of the view that without hearing those persons to whom dwelling units were sold with land, the impugned order could not have been passed by the Competent Authority.

14. In the case of Manharlal Bhagwandas Patel, Special Civil Application no. 3463/96 (Supra),the Court has taken the view that person to whom dwelling unit is sold gets right,title and interest over the land also and, therefore, the Competent Authority cannot make an order under section 21(2) of the Act cancelling the scheme without affording an opportunity of hearing to the purchaser of the dwelling unit. The submission made by the learned Counsel for respondents no.1 & 2 that the view taken by the learned Single Judge in Special Civil Application no. 3463/96 is erroneous and, therefore, the matter should be referred to Division Bench, has no substance. After taking into consideration the scheme as envisaged by section 21(1) of the Act as well as Rule 11-A of the Rules and Schedule I-A, it is held that one

who purchases dwelling unit should be heard before passing any order under section 21(2) of the Act. The view taken by the High Court in the above referred to unreported decision is not erroneous in any manner at all and as I am in respectful agreement with the said view,it is not necessary for me to refer the matter to Division Bench.

15. It is true that if section 21(2) of the Act is construed to mean that those persons to whom dwelling units are sold should also be heard before making declaration as contemplated by that provision, it is likely to create some administrative problems of issuing and serving notices to all members to whom dwelling units are sold. However, those difficulties can be taken care of by necessary clarification that a public notice in a local newspaper would be sufficient compliance of the principles of natural justice and the affected person would be entitled to make his representation through recognised agent such as Secretary of the Society etc. However, principles of natural justice cannot be sacrificed at the altar of administrative convenience or celerity. As the members of the petitioner-society were not heard before passing the impugned orders,the same are liable to be set aside as being contrary to the principles of natural justice. The petition, therefore, should succeed.

For the foregoing reasons, the petition succeeds. Order dated January 8,1997 rendered by the Urban Land Tribunal and Secretary, Revenue Department, Gujarat State, Ahmedabad which is produced at Annexure-F to the petition as well as order dated August 12, 1996 passed by the Competent Authority and Additional Collector,Urban Land Ceiling, Vadodara under section 21(2) of the Act are hereby set aside and quashed. It is clarified that it would be open to the Competent Authority to pass appropriate order after hearing the persons to whom dwelling units are sold by the original land holders.It is also clarified that it would not be necessary for the Competent Authority to issue notice personally to all the members of the petitioner-Society and publication of notice in a local newspaper or pasting of it on a conspicuous part of the office of the petitioner and at the office of Competent Authority would be sufficient compliance of the principles of natural justice. It is further clarified that if any member wants to make any representation in the matter, he shall make it through President of the petitioner-Society Mr. R.V.Singh,who has instituted the present petition, and it will not be necessary for the Competent Authority to personally hear

all those to whom dwelling units are sold. Rule is made absolute accordingly, with no order as to costs.

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